

FEDERAL RULES OF APPELLATE PROCEDURE

- (c) **Criteria for Release.** ~~The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).~~

Rule 10. The Record on Appeal

- (a) **Composition of the Record on Appeal.** The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

- (1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

- (A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

- (i) the order must be in writing;
- (ii) ~~if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and~~
- (iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

- (B) file a certificate stating that no transcript will be ordered.

- (2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

- (3) **Partial Transcript.** Unless the entire transcript is ordered:

- (A) the appellant must — within the 10 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

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Delay in preparing the transcript. When a trial transcript is not filed in the trial court within 60 days after it was ordered, the clerk may direct the parties to proceed under Rule 10(c) or (d) of the Federal Rules of Appellate Procedure.

- (B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and
- (C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.
- (4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.
- (c) **Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.** If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.
- (d) **Agreed Statement as the Record on Appeal.** In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.
- (e) **Correction or Modification of the Record.**
- (1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

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- (2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
 - (A) on stipulation of the parties;
 - (B) by the district court before or after the record has been forwarded; or
 - (C) by the court of appeals.
- (3) All other questions as to the form and content of the record must be presented to the court of appeals.

Practice Notes

Daily Copy. Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription after trial.

Procedures to Expedite Delivery of Transcripts. District courts and regional circuit councils have procedures to expedite transcripts that may be available to counsel experiencing difficulty with late delivery of transcripts by court reporters.

Rule 11. Forwarding the Record

- (a) **Appellant's Duty.** An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. ~~If there are multiple appeals from a judgment or order, the clerk must forward a single record.~~
- (b) **Duties of Reporter and District Clerk.**
 - (1) **Reporter's Duty to Prepare and File a Transcript.** The reporter must prepare and file a transcript as follows:
 - (A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.
 - (B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.
 - (C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

Rule 11. Forwarding the Record

- (a) **Retaining the Record; Certified Copy of the Docket Entries; Physical Exhibits; Archival Storage.**
 - (1) **The district court clerk must:**
 - (A) retain the assembled record, unless this court, on motion or sua sponte, orders otherwise; and
 - (B) send to this court a certified copy of the docket entries instead of the record.
 - (2) **Archival Storage.** The district court clerk must not send the record to archival storage until this court issues its mandate.
- (b) **Access of Parties and Counsel to the Original Record.**
 - (1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a notice of appeal is filed, the trial court clerk must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the trial court.
 - (2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material in the record governed by a protective order of the trial court in